

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CR. APPEAL NO. 3 OF 1998

Roshan Lal son of Pirohit Lal,
aged 50 years, resident of
Birendra Nagar, PS Sahaspur
Lohara, District Rajanandgaon,
M.P.

.. APPELLANT

(IN JAIL)

VS.

THE STATE OF MADHYA PRADESH .. RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE

CRIMINAL PROCEDURE CODE.

(34)
(29)

आदेश पत्रक

मामला क्रमांक Cr.A.3/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	DIVISION BENCH : HON'BLE SHRI L.C.BHADOO, & HON'BLE SHRI DHIRENDRA MISHRA, JJ CRIMINAL APPEAL NO. 3 OF 1998 Appellant : Roshan Lal Vs. Respondent : State of Madhya Pradesh Smt. Hamida Siddiqui, learned counsel for the appellant. Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri D.K. Gwalare, Dy. GA for the respondent/State. <u>ORAL JUDGMENT</u> (05.04.2006) <u>Per L.C. Bhadoo, J</u> By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 12.11.1997 passed by Additional Session Judge Khairagarh Camp Kawardha District Rajnandgaon in S.T. No. 20/1997 whereby learned Additional Session Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life and pay fine of Rs. 1000/-, in default of payment of fine to further undergo RI for six months.	

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	2. Case of the prosecution is that PW-10 Ramhinbai lodged the report P-14 on 30.8.1996 in police station Sahaspur Lohara to the effect that on that day when she was going to throw the garbage of her house, accused met her near the well and said that her cloths are lying at his residence and started dragging her. She objected to this and said that she would not accompany him. She further said to him to burn her cloths but even then the accused continued to drag her. At that time Ramkali, Puru, Rajkunwar alias Mendi and Lalita were also present there. She asked her son Sanjay to call his father Parmeshwar. Thereafter her husband Parmeshwar came there and tried to rescue her on which Roshan left her and caught her husband by neck. However, she had snatched the club from Roshan. Accused pressed the neck of Parmeshwar as a result of which he became unconscious and fell down. Roshan fled away from the scene of occurrence. At that time Jagdish, Gopal and Ramji were also present there. On receiving this report Station House Officer of police station Sahaspur Lohara left for the scene of occurrence and after giving notice P-5 to the Panchas prepared Panchnama P-6 of the body of Parmeshwar. He took into possession two pieces of bamboo under P-7. Body of the deceased was sent for post mortem examination to Primary Health Centre Khamariya where Dr. R.P. Sharma PW-6 conducted the post mortem examination and submitted the post mortem report P-6 in which he noticed bruises round the neck and right side of thyroid cartilage. The doctor opined that cause of death was asphyxia as a result of throttling. Site plan P-17 was prepared by the investigating officer. After completion of investigation charge sheet was filed in the court of Judicial Magistrate First	

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	Class Kawardha who in turn committed the case to the court of Session Judge Rajnandgaon from where learned Additional Session Judge Khairagarh received the case on transfer for trial. 3. Prosecution in order to establish the charge against the accused examined 15 witnesses in all. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him and pleaded his innocence and false implication in the case. 4. Learned Additional Session Judge after hearing the counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment. 5. We have heard Smt. Hamida Siddiqui learned counsel for the appellant and Shri U.N.S. Deo Additional Public Prosecutor and Shri D.K. Gwalare Dy. GA for the respondent/State. 6. Homicidal death of Parmeshwar is not in dispute. That apart, Dr. R.P. Sharma PW-6 who conducted the post mortem examination on the body of the deceased has categorically stated in his evidence that on 31.8.1996 at about 10 a.m. he had conducted the post mortem and found that tongue of the deceased was bluish and swollen, there was a bruise in the size of 1.5 x 1.5 c.m on the right side of the neck brown in colour, on the left side of the neck there were three bruises one above the other. On opening the body it was found that trachea and wind pipe became reddish and black colour blood was present. According to the doctor cause of	

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पे	death was asphyxia due to throttling. Thus from the above evidence of the doctor homicidal death of the deceased is established. 7. As far as the involvement of the accused in commission of the crime in question is concerned Ramhin Bai, PW-10, the wife of the deceased has stated in her evidence that she was married to Dilip Kumar and there were two children from the said wedlock, however, on account of some dispute with Dilip Kumar she left the matrimonial house and started living in her parental village Levai. Thereafter, she came to Veerendra Nagar and started residing in the house of Keshav and then she started living with Parmeshwar as his wife. She resided with Parmeshwar for about five years. Thereafter, Roshanlal took her to his house when she was coming back from her parental house and kept her in his house for three days. When her husband went to take her, accused did not allow to accompany her husband Parmeshwar, on which her husband lodged report in the police station. A month or two thereafter on the fateful day she was going to throw the garbage near a well, the accused met her near the well and started dragging her after catching hold of her hand which was witnessed by Ramkali, Lalita and Puru. She has further stated that she asked her son Sanjay, who was already present, to call his father and when her husband came the accused left her and caught hold of the neck of her husband and pressed his neck as a result of which he fell down and accused fled away. Thereafter, Dr. Channau was called who after examining the deceased declared him dead. The above evidence of Ramhinbai has been corroborated by the evidence of PW-12 Bhuvan Marar in which he has stated that on the fateful day at	

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	about 6 a.m. when he went near the Shiv Devalaya, he saw that accused Roshan was dragging Ramhinbai. At that time Parmeshwar was also there and he was objecting to this act of the accused. In the meanwhile Roshan caught hold of neck of Parmeshwar as a result of which he fell down and the accused ran away from the place of incident. Sanjay PW-14, the son of Ramhinbai who had called his father, has stated that accused is a village Kotwar. On the fateful day when he was present near the well in order to answer the call of nature, he saw that accused was dragging his mother. At that time his father came there on which the accused left his mother and caught his father by neck and pressed his neck as a result of which his father fell down and died. In the cross examination of these three witnesses the defence has not been able to elicit any circumstance which makes their statements untrustworthy or unreliable. 8. In view of the evidence of all the three witnesses complicity of the accused in committing the murder of Parmeshwar by throttling is established. Therefore, we are of the considered opinion that in view of the clinching, legal and ocular evidence of PW-10, PW-12 and PW-14 the trial Court has rightly convicted the accused/appellant for the commission of the offence under section 302 of the IPC. 9. Learned counsel for the appellant argued that from the facts the prosecution has not been able to establish that the accused throttled the deceased with an intention to cause his death.	

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	10. We are unable to accept the above submission of the counsel for the appellant as it has no substance for the reason that accused was quite aggressive as he wanted to take away Ramhinbai by dragging which was objected to by her and that she asked her son Sanjay PW-14 to call his father and when her husband came there and started intervening, the accused left Ramhinbai and caught hold of the neck of the deceased and pressed it and on account of pressing of neck Parmeshwar fell down and died spontaneously due to asphyxia. Therefore, intention of the accused was writ large to cause death of Parmeshwar. 11. In the result, we do not find any illegality or infirmity in the judgment of the trial Court. Accordingly, the appeal being devoid of substance is liable to be dismissed. It is hereby dismissed. Sd/- L.C. Bhadoo Judge	Sd/- DHIRENDRA MISHRA Judge

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